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VICE PRESIDENT
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March 10, 1995

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Meredith J. Jones
Chief, Cable Services Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-266
Permitted Written Ex Parte Presentation

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Dear Ms. Jones:

We appreciate the opportunity to submit information in response to the separate Petitions for Reconsideration filed by QVC, Inc. and Home Shopping Network, Inc., seeking the deletion of commissions from the offset rule.

In the going forward rules, the FCC sought to increase incentives for adding channels to regulated tiers but utilized caps to prevent unlimited costs being passed through to subscribers. The rules were adopted in a context in which, as Lifetime Television has explained in its previous filings, the number of available channels was already seriously limited. Lifetime Television in its Comments in Support of Petitions for Reconsideration, MM Docket No. 92-266 at pages 6-7 (June 29, 1994) addressed the "double squeeze" effect on channel availability resulting from the Cable Act's mandatory carriage and retransmission consent provisions.

Throughout this proceeding, Lifetime Television has consistently urged the Commission to provide program incentives in a neutral fashion that encourages operators' carriage decisions to be based on programming quality and audience demand rather than on the financial impact of regulatory provisions. Given the intense competition among programming services for channel space, Lifetime Television believes that exempting sales commissions paid by transaction-related programming services to cable operators from the offset rule would unfairly favor transaction-related programming services and give them an artificially created competitive edge over more traditional programming services.

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To avoid such an adverse effect, the Commission must take into account the different economic incentives that operate in the programming market. In a letter submitted by Lifetime Television to the Cable Services Bureau dated July 5, 1994, we supported the position taken by The Arts and Entertainment Network and ESPN, Inc. in their joint Comments in Support of Petitions for Reconsideration, MM Docket Nos. 92-266, 93-215 at pages 6-7 (June 16, 1994) that programming incentives should not extend to transaction-related services. As we stated in that letter, the flat fee mark-up proposed by Lifetime to encourage operators to add new program services to regulated tiers would not be necessary or appropriate for transaction-related channels, since they are based on a different economic model than traditional programming channels. That letter was submitted before the Commission's Going Forward Order was released in November 1994 creating greater incentives to programmers.

Since the Going Forward Order permits transaction-related program services such as home shopping networks to fully participate in the programming incentives, it would seriously disadvantage all other program services to exempt from the offset rules sales commissions paid by such transaction-related networks to cable operators. As it is, programming networks face an uphill battle vying for available channel space when competing with home shopping networks. When a cable operator is given a choice of adding a home shopping network which will pay the operator a launch incentive ranging as high as $5.00 per subscriber, charge no license fees and typically pay the cable operator a sales fee of 5% of all merchandise sold (sorted on a zip code basis), compared with adding a basic program service and paying per subscriber license fees, it is no wonder cable operators often select the home shopping network. The magnitude of the payments by home shopping networks to cable operators cannot be matched by the more traditional programming services.

QVC, Inc.'s argument that the offset rule "unfairly sets out a particular programming format for unique and unfavorable treatment" is disingenuous. As QVC, Inc. states at page 3, "...the Order dictates that any revenues received by the cable operator from programmers or shared with programmers must offset any rate increase that would otherwise be allowed by adding a channel." The offset is applied on a channel-by-channel basis, a clarification that the Commission adopted at the request of the home shopping services. As the home shopping networks acknowledged in their filings with the Commission, this clarification resolved a major disincentive for adding home shopping channels. To adopt further changes in the offset rule would simply tilt the competitive balance unfairly in favor of transaction-related programming services.

QVC, Inc. and Home Shopping Network, Inc. each claim that the sales commissions associated with home shopping channels are comparable to local advertising availabilities offered by many traditional programming services. This analogy is inappropriate. In the case of advertising availabilities, the cable operators are effectively purchasing commercial spots from programmers through the payment of the per subscriber license fees (which also cover the license of the programming). Programmers offering local ad avails are not paying operators cash. Instead, the cable operators are completely responsible for the advertising availabilities: operators must make substantial investments in special equipment in order to achieve the insertion capabilities necessary to telecast commercials, and they must hire people to sell and produce the ads. Ultimately, cable operators only receive a fee directly from advertisers (or their agencies) based solely on the operators' own efforts; they receive no money whatsoever from the programming services. By contrast, home shopping networks pay cable operators directly while no services are required to be performed by the operators other than to carry the home shopping networks.

Lifetime Television therefore urges the Commission to deny the petitions filed by the transaction-related programming services with respect to the sales commission offset. We will be happy to provide you with any additional assistance that you may request.

Very truly yours,

Harvey R. Alpert

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Andrew Barrett
Commissioner Susan Ness
Commissioner Rachelle Chong
FCC Secretary (2 copies)